

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF CITIPOWER, LLC    )  
FOR APPROVAL OF                    )  
REORGANIZATION PROPOSAL        )    CASE NO. 2004-00444

O R D E R

On December 15, 2004, Citipower, LLC ("Citipower") filed an application requesting authorization to reorganize its corporate structure to create a parent holding company and to transfer certain nonregulated assets to the holding company and an affiliated company. The Attorney General of the Commonwealth of Kentucky, by and through his Office of Rate Intervention, was granted full intervention in the proceeding. He filed notice on March 21, 2005 that he would not request a public hearing and that he had no objection to the matter being submitted to the Commission on the existing record.

Citipower is a limited liability company organized under the laws of the State of Delaware with its principal offices located in Wilmington, Delaware. It is currently authorized to do business in Kentucky and is in good standing. Citipower engages in the distribution of gas to the public for compensation for lights, heat, power, and other uses in Kentucky and is a utility subject to Commission jurisdiction. KRS 278.010(3)(b), KRS 278.040.

Citipower currently owns two subsidiaries, in whole or in part, that engage in non-regulated activities: Citigas, LLC ("Citigas"), a Delaware limited liability company, and

Lick Branch Unit, LLC (“LBU”), a Kentucky limited liability company.<sup>1</sup> Citipower also owns a nonregulated, 11.5 mile, 4-inch steel pipeline and associated compressor site (“Tennessee Line”) that are used to transport gas to a high-pressure pipeline in Tennessee. Citipower has incurred debt over the years as a result of activities associated with the subsidiaries and the Tennessee Line.<sup>2</sup>

The proposed corporate restructure involves a series of transactions, including the creation of a parent company, CitiEnergy, LLC (“CitiEnergy”), and the creation of a merger corporation, Citipower Acquisition, LLC (“Acquisition Corp.”), both Delaware limited liability companies organized and existing under the laws of the State of Delaware.<sup>3</sup> Citipower has submitted a proposed Agreement and Plan of Reorganization and Merger Agreement (collectively “Agreements”) that will be entered if the Commission approves the proposed reorganization. The Agreements provide that Citipower will merge into Acquisition Corp. and, after the reorganization is completed, the separate corporate existence of Citipower will cease and Acquisition Corp. will change its name to Citipower, LLC. Daniel Forsberg, the Chief Executive Officer of Citipower, states that Acquisition Corp. will seek and receive from the Kentucky Secretary of State a certificate of authority to transact business in Kentucky prior to the effective date of the reorganization.

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<sup>1</sup> Citipower owns 87.52 percent of LBU.

<sup>2</sup> Application at 2.

<sup>3</sup> Supplemental Affidavit of Daniel R. Forsberg to Application of Reorganization of Citipower, LLC.

Citipower states that the shareholders of Citipower will exchange their ownership shares for equal ownership shares in CitiEnergy and that, when the restructuring is completed, CitiEnergy will own 100 percent of Citipower, 100 percent of Citigas, and 87.52 percent of LBU. In addition, as part of the reorganization, Citipower will contribute the Tennessee Line to Citigas. In order to effect the transfer of this line, as well as separate and transfer the nonregulated assets, debt, and equity from Citipower to CitiEnergy and Citigas, Citipower proposes the following journal entry:

Member's Capital	\$6,010,641	
Notes Payable	1,238,173	
Accumulated Depreciation	437,121	
Plant in Service		\$1,188,258
LBU, LLC Investment		2,300,636
Citigas, LLC Investment		1,559,427
Retained Earnings		2,231,124
Cash		406,490

This results in Citipower maintaining \$3.8 million in gross plant assets, \$2.173 million in equity, \$122,568 in cash, and \$250,000 in debt.<sup>4</sup>

CitiEnergy will borrow \$1,000,000 from RBC Centura to retire \$750,000 of debt owed by Citipower to the Bank of McCreary County. The collateral for the remaining debt in Citipower's name will be the assets of the regulated utility. RBC Centura will not take a collateral interest in the assets of Citipower.<sup>5</sup>

Citipower states that the reorganization will not result in a change in the current management of Citipower and will result in the change of only one person involved in the day-to-day operations.

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<sup>4</sup> Response to Commission Staff's First Data Request, Item 2.

<sup>5</sup> Application at 2-3.

Pursuant to KRS 278.020(5), persons under the jurisdiction of the Commission are required to obtain Commission approval prior to the acquisition or transfer of ownership or control of any utility under the jurisdiction of the Commission. KRS 278.020(6) prohibits any entity from acquiring control of any utility under the jurisdiction of the Commission without prior approval. Pursuant to KRS 278.020(7)(b), subsection (6) is not applicable to the transfer of a utility when, as here, the acquirer is under common control with the utility. Consequently, subsection (6) does not apply in this instance. However, KRS 278.020(5) contains no exception for corporate reorganizations and Commission approval of the proposed transaction is necessary.

Having reviewed the record and being otherwise sufficiently advised, the Commission finds that the reorganization should be transparent to Citipower's customers and that CitiEnergy will have the financial, technical, and managerial ability to operate Citipower and continue to provide gas service. Therefore, we find that the corporate reorganization proposed by Citipower should be approved. However, we find that since Citipower will merge into Acquisition Corp. and will cease to exist, Citipower should be required to provide the Commission with documentation that demonstrates that Acquisition Corp. is authorized to transact business in the state of Kentucky prior to completion of the reorganization. Citipower is reminded that, as a Kentucky regulated utility, any and all transactions with its affiliates are required to be in compliance with the provisions of KRS Chapter 278.

IT IS THEREFORE ORDERED that:

1. The corporate reorganization proposed by Citipower is approved.

2. Citipower shall provide the Commission with documentation that demonstrates that Acquisition Corp. is authorized to transact business in Kentucky prior to completion of the reorganization.

3. Citipower shall notify the Commission when the reorganization has been completed. If it has not been completed within 6 months of the date of this Order, Citipower shall provide a written status report to the Commission.

Done at Frankfort, Kentucky, this 14<sup>th</sup> day of April, 2005.

By the Commission

ATTEST:



Executive Director